



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

May 29, 2018

Jack LaFontaine
The Mutt Hut, LLC
318 Laurel Avenue
Grover, NC 28073

NOTICE OF CIVIL PENALTY AND NOTICE OF WARNING

Re: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF 02 N.C. ADMINISTRATIVE CODE ("NCAC") CHAPTER 52J, SECTIONS .0102(1) – (3), .0201(d), .0204(a), .0207(b)(6) and (d) and .0210(d)

AWS-CP-2018-4

**Facility: The Mutt Hut, LLC
License No. 306**

Dear Mr. LaFontaine:

Pursuant to N.C. General Statute § 19A-40, I am issuing this notice that The Mutt Hut, LLC is hereby assessed a civil penalty of \$1,100.00 as provided in the enclosed Notice of Violations.

With regard to the civil penalty, within 60 days from the date of receipt, The Mutt Hut, LLC must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N.C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to N.C. General Statute § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. General Statute § 150B-23. The petition must be filed with the N.C. Office of Administrative Hearings ("OAH") within 60 days of your receipt of this document. Additionally, the petition must be accompanied by a filing fee of twenty dollars (\$20.00) payable to OAH. Should you have any questions about what the fee would be for your case, please contact the OAH Clerk's Office at 919-431-3000. Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000.

You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Norris', with a long horizontal flourish extending to the right.

Patricia Norris, DVM, MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, State Veterinarian
Tina Hlabse, General Counsel, NCDA&CS
Joe Reardon, Assistant Commissioner, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

Gregory S. McIntyre, Registered Agent for The Mutt Hut, LLC
PO Box 165
Shelby, NC 28151-0165

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

IN THE MATTER OF

THE MUTT HUTT, LLC

) NOTICE OF VIOLATIONS AND
) ASSESSMENT OF CIVIL PENALTY
)
) FOR VIOLATIONS OF TITLE 02 N.C.
) ADMINISTRATIVE CODE (NCAC)
) CHAPTER 52J, SECTIONS .0102(1) – (3),
) .0201(d), .0204(a), .0207(b)(6) AND (d)
) AND .0210(d)

Acting pursuant to N.C. General Statute § 19A-40, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter, The Mutt Hut LLC ("the kennel"), operated by Jack LaFountaine, was a boarding kennel, licensed pursuant to N.C. General Statute § 19A-28.
2. On May 17, 2018, AWS received a complaint concerning the care provided by the kennel for dogs boarding at the facility.
3. Based on the information in the complaint, AWS opened an investigation. The investigation included review of the complaint, a site visit by AWS Animal Health Technician Jay Blatche ("Inspector Blatche"), an interview with the kennel staff, and a review of the relevant kennel records.
4. The facility site visit by Inspector Blatche on May 21, 2018 documented the following:
 - a. A strong odor of feces and urine was present, due to unsanitary conditions throughout the facility including the kennels. In addition, the floors and walls in the main hallway were not clean;
 - b. Despite the presence of several rat traps, live rats were observed in the kitchen, laundry room and a kennel room. A large amount of rodent feces was noted throughout the facility;
 - c. The floors in Rooms 1 and 5 were damaged and not impervious to moisture;
 - d. The wall in the first kennel in Room 4 is damaged and the chain-link has deteriorated so that it is no longer impervious to moisture and cannot be easily sanitized;
 - e. The kitchen floor and counter have dog food spillage present. Several bags of dog food appeared to have been gnawed open by rats;
 - f. The blacktop surface of the back kennels needs to be sealed to be impervious to moisture;
 - g. The chain link for kennels in Rooms 2, 3, 6 and 7 are rusted and no longer impervious to moisture and cannot be easily sanitized;
 - h. The floor outside of Room 9 is damaged;
 - i. The dog beds are damaged and cannot be easily sanitized;
5. The review of the relevant kennel records revealed the following:
 - a. The dog, Marbles, requires medication for heartworm disease but has not been medicated since April 16, 2018, when the facility ran out of medication for the dog;
 - b. The information required by 02 NCAC 52J .0102 (1) and (2) was missing for 4 dogs: Axel, Daniel, Reba and Linkin;

- c. The medication logs for Reba and Axel did not contain the information required by 02 NCAC 52J .0102(3); and
- d. According to the kennel records, the rabies vaccinations for 3 dogs, Shelby, Angel, Ruckus and Daniel, have expired.

CONCLUSIONS

As a result of this investigation, AWS concludes that the kennel, either by act or omission, violated the following provisions:

02 NCAC 52J .0102(1) for failing to maintain required records of owner or responsible person information for 4 dogs: Axel, Daniel, Reba and Linkin;

02 NCAC 52J .0102(2) for failing to maintain required records of animal description information for 4 dogs: Axel, Daniel, Reba and Linkin;

02 NCAC 52J .0102(3) for failing to maintain required records for medications administered to 2 dogs: Reba and Axel;

02 NCAC 52J .0201(d) for failing to store food adequately to protect it against infestation or contamination by vermin and insects;

02 NCAC 52J .0204(a) for failure to maintain surfaces within primary enclosures impervious to moisture in these areas: Room 1 – damaged, unsealed floor, Room 2 – rusted chain link; Room 3 – rusted chain link; Room 4 – damaged wall and rusted chain link; Room 5 – damaged, unsealed floor; Room 6 – rusted chain link; Room 7 rusted chain link; and Back kennels – unsealed blacktop;

02 NCAC 52J .0207(b)(6) for failure to keep the main hallway, which is accessible to multiple animals, clean and sanitary;

02 NCAC 52J .0207(d) for failure to establish and maintain an effective program for the control of mammalian pests; and

02 NCAC 52J .0210(d) for housing 3 dogs that are not in compliance with the North Carolina Rabies law, G.S. 130A, Article 6, Part 6.

(See Appendix for text of referenced General Statutes and Administrative Code)

CIVIL PENALTIES

As required by N.C. General Statute § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, The Mutt Hut LLC is hereby assessed a civil penalty for the following violations:

\$100.00 for violation of 02 NCAC 52J .0102(1) failing to maintain required records of owner or responsible person information for 4 dogs: Axel, Daniel, Reba and Linkin

\$100.00 for violation of 02 NCAC 52J .0102(2) for failing to maintain required records of animal description information for 4 dogs: Axel, Daniel, Reba and Linkin;

\$100.00 for violation of 02 NCAC 52J .0102(3) for failing to maintain required records for medications administered to 2 dogs: Reba and Axel;

\$100.00 for violation of 02 NCAC 52J .0201(d) for failing to store food adequately to protect it against infestation or contamination by vermin and insects;

\$200.00 for violation of 02 NCAC 52J .0207(b)(6) for failure to keep the main hallway, which is accessible to multiple animals, clean and sanitary;

\$200.00 for violation of 02 NCAC 52J .0207(d) for failure to establish and maintain an effective program for the control of mammalian pests; and

\$300.00 for 3 violations (\$100.00 per violation) of 02 NCAC 52J .0201(d) for housing dogs that are not in compliance with the North Carolina Rabies law, G.S. 130A, Article 6, Part 6.

\$1,100.00 TOTAL AMOUNT ASSESSED

Continued or future violation of the regulations referenced in this letter will be considered a willful disregard or violation of the NC Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in action against your facility's license pursuant to NC General Statute § 19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under NC General Statute § 19A-40.

NOTICE OF WARNING AND DEFICIENCY

As to the matter of the violations of 02 NCAC 52J .0204(a) for failure to maintain surfaces within primary enclosures impervious to moisture, this letter serves as a written warning indicating in which respects the kennel has violated these provisions.

The May 21, 2018 site visit noted lack of compliance with this regulation in these areas: Room 1 – damaged, unsealed floor, Room 2 – rusted chain link; Room 3 – rusted chain link; Room 4 – damaged wall and rusted chain link in the first kennel; Room 5 – damaged, unsealed floor; Room 6 – rusted chain link; Room 7 rusted chain link; and back kennels – unsealed blacktop


Given the severity of the damaged areas that are no longer impervious to moisture in Rooms 1 and 5 and the first kennel in Room 4, these areas need to be closed with no animal access effective immediately until repairs can be completed.

Please submit to the AWS office a timeline to complete corrective actions for all the non-compliant areas within 10 days of receipt of this letter.

Continued or future violation of the statutes or regulations referenced in this letter and the attached inspection reports will be considered a willful disregard or violation of the NC Animal Welfare Act and the rules issued pursuant thereto. Such willful disregard or violation may result in disciplinary action

against your facility's license pursuant to NC General Statute §19A-30 and/or the assessment of a civil penalty of up to \$5,000.00 per violation under NC General Statute §19A-40.

May 29, 2018
Date


Patricia Norris, DVM, MS
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;
- (7) Pursuing a continued course of misrepresentation or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect. (1977, 2nd Sess., c. 1217, s. 11; 1987, c. 827, s. 67.)

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 6; 1998-215, s. 3.)

02 NCAC 52J .0102 RECORDS; BOARDING KENNELS

Operators of boarding kennels shall maintain records of all dogs and cats showing the following:

- (1) name and address of owner or person responsible for animal, the date of entry and signature and address of individual to whom animal is released and the date of release;
- (2) description of animal including breed, sex, age and color marking; and
- (3) veterinary care provided while boarded, which shall include date, times, description of medication (including name and dosage) and initials of person administering product or procedure.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.

02 NCAC 52J .0201 GENERAL

(d) Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against infestation or contamination by vermin and insects. All open bags of food shall be stored in airtight containers with lids. Refrigeration shall be provided for supplies of perishable food.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.

02 NCAC 52J .0204 PRIMARY ENCLOSURES

(a) Primary enclosures shall be constructed so as to prevent contamination from waste and wastewater from animals in other enclosures. All surfaces with which an animal comes in contact shall be impervious to moisture. For primary enclosures placed into service on or after January 1, 2005, no wood shall be within the animal's reach. For primary enclosures in use in a licensed or registered facility prior to January 1, 2005, any damaged wood must be replaced in a manner that does not permit contact with wood by the animal.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0207 SANITATION

- (b) (6) Any area accessible to multiple animals shall be kept clean and sanitary.
- (d) An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005; April 1, 1985.

02 NCAC 52J .0210 VETERINARY CARE

(d) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. However, no shelter shall be disapproved following inspection or otherwise cited for failure to inoculate any dog or cat known to be less than 12 weeks old or until such animals have been in the shelter at least 15 days.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. March 23, 2009; January 1, 2005.